

Comment Letter 0042

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VIA FEDERAL EXPRESS

Mr. Dan Leavitt
California High Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Comments on Draft Environmental Impact Report/Environmental Impact Statement for the Proposed California High-Speed Train System

Dear Mr. Leavitt:

This firm represents the San Felipe Ranch with regard to the California High-Speed Train System (hereinafter referred to as the "HST" or the "Project"). This letter and the attached letter from consulting biologist Diane Renshaw ("Renshaw letter"), incorporated herein, provide San Felipe Ranch's written comments on the Draft Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the *Proposed* California High-Speed Train System ("DEIR/S").

Three of the proposed Bay Area to Central Valley alignments¹ for the HST considered in the DEIR/S are identified as the Diablo Range Direct Alignments (Northern Tunnel, Minimize Tunnel, and Tunnel Under Park Options). (DEIR/S, pp. 2-53 to 2-54 and Fig. 2.6-22.) As currently proposed, all three Diablo Range alignment options would bisect San Felipe Ranch. The approximately 28,700 acre San Felipe Ranch consists of vast rolling hills covered by untold numbers of oaks, pines, and sycamores. It is dotted throughout by seasonal and perennial watercourses. San Felipe Ranch provides habitat for numerous threatened and endangered species, including California tiger salamander, California red-legged frog, burrowing owls, and western pond turtles. (Please see attached Renshaw letter for a detailed description of the Ranch's diverse biological resources.) Currently, this primarily undeveloped

¹ All of the proposed Diablo Range alignments run between Merced and San Jose.

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area supports a working cattle ranch and contains only a handful of structures. The extensive surveying, geological testing, blasting, excavating, and hauling necessary to construct any of the proposed Diablo Range alignment options, which includes lengthy stretches of tunnels, would have significant impacts upon the on-going cattle ranching activities. In addition, all of the Diablo Range options would have substantial adverse effects on the rural character of the region and the natural environment of the ranch and the surrounding areas, including Henry W. Coe State Park and other environmentally valuable open space areas.

As discussed below, the DEIR/S falls far short of the standards for adequate environmental review as set forth in the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.*) and the CEQA Guidelines (California Code of Regulations, title 14, § 15000 *et seq.*), even for a program-level EIR/S.² Regardless of whether an EIR is styled as a program-level document, CEQA Guidelines section 15151 states that an EIR "should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." Given the unprecedented scale of this important statewide transportation project, it is imperative that the DEIR/S provide both decisionmakers and the public a full opportunity to understand and analyze the Project's significant effects on the environment.

Far from providing the requisite level of information and analysis, this DEIR/S fails to provide information in any meaningful degree of detail with regard to the significant effects on the environment of constructing and operating the alignments and station locations that will be approved by the California High Speed Rail Authority (the "Authority") and United States Department of Transportation (hereinafter referred to collectively as "the agencies"). Entire categories of key analyses appear to be missing from the document or given such superficial treatment as to contain no useful analysis whatsoever. These include:

- **Construction Impacts:** No discussion of construction-related impacts on air or water quality, solid waste or hazardous waste generation, hydrological systems, biological habitat, noise production, or traffic effects. No discussion of construction equipment, staging areas, or haul routes. Additionally, no description of grading, filling, tunneling, or blasting activities and associated environmental effects.

² While the focus of this letter is primarily on compliance with CEQA, the federal government's obligations under the National Environmental Policy Act ("NEPA") (42 U.S.C. § 4321 *et seq.*) are similar to the State's with regard to the adequacy of the DEIR/S.

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- Hazardous Materials and Waste: No discussion of the types of hazardous materials that will be used and hazardous waste generated for the operation and maintenance of the HST system.
- Noise and Vibration: No analysis of the effects that the noise and vibration created by the HST system will have on wildlife, and, specifically, on migratory birds and waterfowl.
- Agricultural Use: No analysis of the effects particular alignments will have on ranching or grazing activities.
- Fire: No discussion of potential fire hazards posed by construction or operations in rural and open space areas.

The DEIR/S also repeatedly and impermissibly defers mitigation to the next phase of environmental review, even though the HST's alignments and station locations will be selected and their environmental impacts can be identified, analyzed, and lessened or avoided through the adoption of mitigation measures. In fact, it is unclear from the DEIR/S whether the agencies are willing to commit to *any* mitigation at this time. In addition, the DEIR/S fails to analyze other far less environmentally damaging alternatives for the Bay Area to Central Valley corridor, most notably the Altamont Pass alignment³

Overall, the DEIR leaves decisionmakers and members of the public with little information or understanding of the significant environmental impacts of the proposed Project and undermines their efforts to assess the differences among the alternatives and the various proposed alignments. The numerous flaws in the DEIR/S are so fundamental as to render the document legally inadequate. Because the DEIR/S lacks sufficient analysis of the significant environmental impacts of the Project, fails to propose and analyze mitigation measures, and all but ignores the cumulative impacts analysis, a revised DEIR/S must be prepared and recirculated

³ The Altamont Pass alignment was previously the favored alignment for the Bay Area to Central Valley Corridor because it generated the highest ridership and revenue for the system, was less costly, and had less environmental impacts than the other two northern mountain pass alternatives (Panoche and Pacheco). See *High-Speed Rail Summary Report and Action Plan* (California Intercity High Speed Rail Commission, 1996), p. ES-7. By excluding the Altamont route from consideration and analysis in the Project DEIR/S, the agencies appear to have committed to a predetermined set of alignments prior to preparation of the required environmental review and to have impermissibly eliminated a viable and environmentally superior route, thereby unreasonably constraining the range of alternatives prior to completing the environmental review process.

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in order to adequately inform the public, decisionmakers, and the affected agencies of the environmental repercussions of the Project.

DISCUSSION

I. PREPARATION OF A PROGRAM-LEVEL EIR/S DOES NOT ALLOW AN OVERLY VAGUE AND INCOMPLETE ANALYSIS.

"The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (Pub. Res. Code § 21002.1(a).) As will be discussed more fully below, the DEIR/S fails to adequately disclose and analyze the Project's significant environmental impacts; to identify or adopt specific, feasible, and enforceable mitigation measures; and to analyze a reasonable range of alternative alignments. The DEIR/S justifies this lack of analysis and disclosure on the grounds that this EIR/S is a "tier 1" or "program-level" document (DEIR/S, pp. 1-1 to 1-3) and, therefore, the DEIR/S only presents information the agencies consider necessary to analyze "a general conceptual design." (DEIR/S, p. 1-3.) It defers the "detailed analysis" of the specific impacts of the Project to future, project-level documents. (*Id.*) This approach, however, is misguided. It is clear that calling an analysis "program-level" does not relieve the lead agency of its duty to address the significant environmental effects of the Project at the earliest possible time. "EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design." *Bozung v. Local Agency Formation Commission*, 13 Cal.3d 263, 282 (1975) (quoting CEQA Guidelines § 15013); see also *Stanislaus Natural Heritage Project v. County of Stanislaus*, 48 Cal.App.4th 182, 202-3 (1996). This is to allow for flexibility in the planning process and ensure that environmental factors be considered "at the earliest stage of a planned development before it gains irreversible momentum." *Bozung*, 13 Cal.3d at 284, fn. 28.

The DEIR/S systematically fails to disclose impacts through presenting impacts as gross aggregation of background data, ignores the severity of impacts, and presents a conclusory analysis of the Project's environmental effects. Merely because the agencies have prepared a programmatic DEIR/S, they are not exempt from providing all relevant and reasonably available environmental information to enable the public and decisionmakers to discern whether a selected corridor or station would have a significant effect on the environment.

A. DEIR/S Impermissibly Defers Disclosure and Analysis of Potentially Significant Environmental Impacts to Future Environmental Review.

Simply calling the DEIR/S a program-level document does not excuse the agencies from complying with CEQA's requirement to prepare an DEIR/S that includes a detailed

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description of the reasonably foreseeable environmental impacts of the proposed project. Stanislaus National Heritage Project, 48 Cal.App.4th at 197. “[T]he tiering provisions of CEQA do not exempt a public agency from the Public Resources Code section 21100, subdivision (b)(1) requirement that an EIR shall include a detailed statement setting forth ‘[a]ll significant effects on the environment of the proposed project[.]’” *Id.* at 186.

Preparing a program-level DEIR/S does not grant an agency permission to defer the identification of significant environmental impacts until the preparation of project-specific studies. *Id.* at 199. CEQA requires consideration of environmental consequences at the “earliest possible stage, even though more detailed environmental review may be necessary later.” McQueen v. Board of Directors, 202 Cal.App.3d 1136, 1147 (1988); *see also Bozung*, 13 Cal.3d at 282. Regardless of an agency’s stated intention to undertake site-specific environmental review for future project phases, the use of tiering and a program EIR is not a device for deferring the identification of significant environmental impacts. Stanislaus National Heritage Project, 48 Cal.App.4th at 199. More detailed analysis may be deferred only if: (1) it is not “meaningfully possible” to obtain more detailed information during the earlier stage of the program EIR; and (2) having the additional information at the earlier stage is not important in determining whether or not to proceed with the project. No Oil, Inc. v. City of Los Angeles, 196 Cal.App.3d 223, 236-7 (1987).

For this Project, it is both meaningfully possible and crucial to obtain more detailed information prior to approval of the proposed Project. Because the DEIR/S is intended to be used in “selecting a preferred corridor and station locations” (DEIR/S, pp. S-16, S-18), the DEIR/S must analyze the significant environmental impacts of these actions as well as examine mitigation measures and alternatives that could feasibly lessen or avoid the Project’s impacts. “While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” (CEQA Guidelines § 15144.) Towards this end, the agencies must “attempt in good faith to fulfill its obligation under CEQA to provide sufficient meaningful information regarding the types of activity and environmental effects that are reasonably foreseeable” from the proposed alignments and stations. Laurel Heights Improvement Association v. Regents of the University of California, 47 Cal.3d 376, 399 (1988) (Laurel Heights I).

Rather than fulfilling this obligation under CEQA, the DEIR/S provides insufficient detail concerning many elements of the proposed Project and its associated significant environmental impacts. The following is a non-exhaustive list of potential environmental impacts the DEIR/S improperly defers for study:

- Regional air quality impacts related to power generation for operation of the HST system. (DEIR/S, pp. 3.3-7, 3.3-19.)

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- Adequacy of power supply for HST system. Defers study of electricity requirements and transmission infrastructure needed to supply power for HST system. (DEIR/S, p. 3.5-23.)
- Impacts on grazing lands. (DEIR/S, p. 3.8-6.)
- Identification of potentially affected archaeological and historical resources. (DEIR/S, p. 3.12-27.)
- Geological impacts which might affect project design. (DEIR/S, p. 3.13-8.)
- Aesthetic impacts on Section 4(f) and 6(f) resources as a result of noise barriers. (DEIR/S, p. 3.16-11.)
- Impacts related to construction. (DEIR/S, p. 7-2.)

Deferring these essential analyses renders the DEIR/S incomplete, and undermines the EIR’s important purpose of enabling “informed decisionmaking and informed public participation.” Save Our Peninsula Committee v. Monterey County Board of Supervisors, 87 Cal.App.4th 99, 118 (2001). The DEIR/S’s failure to adequately identify and analyze the potentially significant effects of the Project renders this document legally inadequate.

With regard to impacts that the DEIR/S does purport to analyze, many of the “analyses” simply compare aggregate, gross acreage affected by the different alternatives, but do not indicate the relative value or significance of the resources in those affected areas. For example, the entire analysis of impacts on biological resources and wetlands for the Bay Area to Merced region consists of two pages comparing the number of acres of habitat and wetlands potentially affected by the Modal Alternative and the alignment options for the High-Speed Train Alternative. (DEIR/S, pp. 3.15-21 to 3.15-22.) As set forth in the attached Renshaw letter, the analysis determines which HST alignment option is preferable based on the number of acres (or, in the case of wetlands, the number of linear feet) affected without further inquiring into the nature of the resources within those areas.

B. The DEIR/S Improperly Defers Identification and Adoption of Feasible Mitigation Measures.

“The purpose of an environmental impact report is . . . to list ways in which the significant effects of . . . a project might be minimized . . .” (Pub. Res. Code § 21061.) Hence, CEQA requires that mitigation measures, which “avoid or substantially lessen” the significant environmental effects of proposed projects, be identified and analyzed in the EIR. (Pub. Res. Code § 21002.) The California Supreme Court has described the mitigation and alternatives

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sections of an EIR as the "core" of the document. Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 564 (1990).

An EIR is inadequate if it fails to propose mitigation measures, or if the proposed mitigation measures are so undefined that it is impossible to evaluate their effectiveness. San Franciscans for Reasonable Growth v. City and County of San Francisco, 151 Cal.App.3d 61, 79 (1984). In addition, mitigation measures must be "fully enforceable." (Pub. Res. Code § 21081.6(b).) Thus, CEQA generally requires that all mitigation measures be adopted simultaneously with project approval. An agency may only defer formulation and adoption of detailed mitigation measures when the agency commits to adhering to specified performance standards that will ensure the avoidance of any significant effects, and lists potential, feasible means to achieve those performance standards. Sundstrom v. County of Mendocino, 202 Cal.App.3d 296, 306-7 (1988); Sacramento Old City Association v. City Council of Sacramento, 229 Cal.App.3d 1011, 1028 (1991); CEQA Guidelines § 15126.4(a)(1)(B).

Contrary to these core requirements of CEQA, the DEIR/S does not propose enforceable mitigation measures. Instead, it suggests "strategies" - possible ways to avoid potential environmental impacts - of which detailed descriptions and analyses are to be postponed until preparation of the project-level DEIR/S. For example, in the Air Quality section, the DEIR/S states:

Potential construction impacts and potential mitigation measures should all be addressed in subsequent analyses. Once an alternative and alignment is established a full construction analysis should be conducted. This analysis should quantify emissions from construction vehicles, excavation, worker trips, and other related construction activities. Mitigation measures, if required, should be detailed and a construction monitoring program, if required, should be established.

(DEIR/S, p. 3.3-33.) Another, typical example can be found in the Energy section: "If the proposed HST Alternative were implemented, the HST system would be designed to minimize electricity consumption. The design particulars would be developed at the project-level of analysis" (DEIR/S, p. 3.5-22.) And in the Biological Resources and Wetlands section, the following mitigation "strategy" is proposed for future study:

Avoidance of potential impacts may be achieved through project design changes to reduce the impact footprint or relocation of the sub-segments. For example, to avoid or minimize impacts in sensitive areas, alignment plans and profiles could be adjusted, or proposed structures could be constructed above grade or in tunnels. In addition,

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construction of wildlife underpasses, bridges, and/or large culverts, could be considered to facilitate known wildlife movement corridors.

(DEIR/S, pp. 3.15-30 to 3.15-31.)

The following is a non-exhaustive list of DEIR/S subject areas where mitigation measures are vague, unenforceable, and improperly deferred to a later date:

- Traffic. (DEIR/S, 3.1-24 ("Consultation and coordination with public transit services in order to encourage the provision of adequate bus feeder routes to serve proposed station areas could mitigate potential transit impacts."))
- Air quality. (DEIR/S, p. 3.3-33 ("The proposed HST system could be designed to use state-of-the-art, energy efficient equipment to minimize potential air pollution impacts associated with power used by the proposed HST system."))
- Noise and Vibration. (DEIR/S, p. 3.4-23 ("More detailed mitigation strategies for potential noise and vibration impacts would be developed in the next stage of environmental analysis."))
- Land Use. (DEIR/S, p. 3.7-26 ("Local land use plans and ordinances would be further considered in the selection of alignments and station locations."))
- Biological Resources. (DEIR/S, p. 3.15-31 ("Special mitigation needs would be considered in the future with the appropriate authorities that are responsible for regional mitigation (conservation) banks, HCPs, NCCPs, or special area management plans. Mitigation may include consideration of acquisition, preservation, or restoration of habitats, or relocation of sensitive species. Specific mitigation measures would be identified at the project level of environmental review."))
- Section 4(f) and 6(f) Resources. (DEIR/S, p. 3.16-12 ("Given the broad focus of analysis for this Program EIR/EIS, the primary goal for project-level analysis would be to identify Section 4(f) and 6(f) resources and potential impacts in greater detail, to identify the existence of potential prudent and feasible alternatives, and to identify and analyze potential mitigation measures."))

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The DEIR/S's failure to identify feasible mitigation measures renders the DEIR/S inadequate. In the absence of proposed mitigation measures that will, at the very least, achieve specific performance standards, the public and decisionmakers cannot evaluate the effectiveness and feasibility of the proposed mitigation, and the DEIR/S cannot conclude that the potentially significant impacts of the Project will, in fact, be mitigated.

Moreover, it does not appear that the agencies have committed themselves to carrying out any of the proposed "strategies." Further, the DEIR/S does not describe what would be required to be accomplished under these strategies and how the strategies would be monitored pursuant Public Resources Code section 21081.6(a)(1), which states that:

The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation.

For example, in the Traffic and Circulation section, the DEIR/S states: "California High Speed Rail Authority could participate in developing potential construction and operational mitigation measures in consultation with state, federal, regional, and local governments and affected transit agencies during project-level reviews." (DEIR/S, p. 3.1-23.) This measure does not involve a commitment on the part of the Authority to perform any particular action that would lessen or avoid a significant effect of the Project on the environment. Similarly, in the Agricultural section of the DEIR/S the following is suggested:

Consideration of potential mitigation such as protection or preservation of off-site lands to mitigate conversion of farmlands or acquiring easements, or payment of an in-lieu fee as mitigation mechanisms, would depend on the potentially considerable environmental impacts identified at specific locations, as assessed in a project-level document.

(DEIR/S, p. 3.8-18.) None of these are actually selected, described in any detail, or analyzed for effectiveness in addressing potentially significant environmental impacts.

The mitigation strategies throughout the DEIR/S represent suggestions for possible future areas of study and potential adoption, not effective and feasible measures that will reduce the environmental effects of the proposed Project. Therefore, the DEIR/S must be revised to include specific mitigation measures that can be assessed by the public, agencies and decisionmakers as to their effectiveness in mitigating the environmental harms associated with the Project.

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II. THE DEIR/S IS NEARLY DEVOID OF MEANINGFUL ANALYSIS OF THE PROJECT'S SIGNIFICANT EFFECTS ON THE ENVIRONMENT.

CEQA requires that an EIR be detailed, complete, and reflect a good faith effort at full disclosure. (CEQA Guidelines § 15151.) The DEIR/S should provide a sufficient degree of analysis to inform the public about the proposed project's adverse environmental effects and to allow decisionmakers to make decisions that intelligently take account of environmental consequences. (*Id.*) Consistent with this requirement, the information regarding the project's impacts must be "painstakingly ferreted out." *Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado*, 131 Cal.App.3d 350, 357 (1982) (finding an EIR for a general plan amendment inadequate where the document did not make clear the effect on the physical environment).

Meaningful analysis of impacts effectuates one of CEQA's fundamental purposes: to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Laurel Heights Improvement Association v. Regents of the University of California*, 6 Cal.4th 1112, 1123 (1993) (*Laurel Heights II*) (emphasis in original). To accomplish this purpose, an EIR must contain facts *and* analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 568 (1990). In addition, an EIR's conclusions must be supported by substantial evidence. *Laurel Heights I*, 47 Cal.3d at 392-3.

As documented below, the DEIR/S's vague analysis of potentially significant environmental effects precludes a full and proper understanding of the Project's impacts.⁴ Indeed, in most sections of the DEIR/S, it is impossible to determine whether and on what basis an impact is considered significant, less than significant, or would be reduced to a less-than-significant level following mitigation, or how the impact analysis is related to the standard of significance.⁵ Furthermore, the DEIR/S is almost entirely devoid of information that can be used to assess whether any particular corridor or station will have a greater or lesser effect on the environment than another.

⁴ Regrettably, the maps provided in the DEIR/S add little clarity to the analysis. The maps, on the whole, are at an extremely small scale, and the shading scheme attempting to distinguish differences is all but illegible.

⁵ Table 7.3-1 does not satisfy CEQA's requirement that the EIR identify the significance of impacts before and after mitigation. (CEQA Guidelines § 15126.2.)

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A. The DEIR/S Fails to Adequately Identify and Analyze the Project's Impacts on Biological Resources.

As discussed in greater detail in the attached Renshaw letter, the DEIR/S fails to adequately describe the biological resources and wetlands present on the San Felipe Ranch, and does not disclose the potential impacts the Project could have on these resources. The ranch is of immense value as an undisturbed wildlife habitat for California red-legged frogs, California tiger salamander, western pond turtles, and burrowing owls. Herds of tule elk and pronghorn antelope have been reintroduced to the ranch. There are outstanding examples of valley oak woodlands, with heritage oak trees of great antiquity, sycamore woodlands, and valley needle grasslands. However, the DEIR/S is silent as to the potentially significant impacts the proposed Diablo Range alignments would have on these protected species and sensitive plant communities. As is documented in the Renshaw letter, all three of the proposed Diablo Range alignments will substantially adversely affect special-status species, jurisdictional waters, and wildlife corridors, but there is no informative discussion of these impacts in the DEIR/S nor are appropriate mitigation measures proposed. Moreover, there is no discussion of construction impacts on these biological resources or wetlands.

In addition, the DEIR/S uses incomplete data to analyze and compare alignment options. The California Natural Diversity Data Base (CNDDDB) maps, upon which the DEIR/S relies, only show reported occurrences of special-status species and, thus, are heavily biased toward areas where site-specific environmental surveys have been required as part of development projects. Because many private lands and ranches, such as the San Felipe Ranch, have not been surveyed, the CNDDDB is likely to have few reported occurrences for the vast area affected by the Diablo Range alignments. Thus, when the DEIR/S merely uses a comparative count of the occurrences of special-status species in the database, this analysis is meaningless in determining the absolute sensitivity of a particular area and makes no distinctions based on the rarity or legal status of the species involved.

B. The DEIR/S All But Ignores Construction Impacts.

While the projected construction period for the Project is 10 years and construction will impact thousands of acres throughout the state, including construction in numerous state parks and open space areas, the DEIR/S makes only the most cursory of references to construction impacts. (DEIR/S, p. 7-2.) This lack of disclosure and analysis cannot legitimately be avoided under the guise of a program-level DEIR/S. The types of construction impacts associated with the proposed Project are knowable at this time and must be disclosed and analyzed in the DEIR/S.

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A revised DEIR/S must contain, at a minimum, a discussion of the following construction related impacts:⁶

- A description of the newly created access roads running through undeveloped open space and parklands, the associated impacts of creating such roadways, and feasible mitigation measures to reduce these impacts.
- Identification of the magnitude of staging areas for construction equipment and supplies, and what mitigation measures will be implemented to reduce environmental impacts associated with these areas.
- A comprehensive discussion of all impacts associated with tunneling, including above-ground disturbances required as part of the geotechnical investigations needed to design and locate the tunnels as well as the tunneling process; use of explosives associated with blasting; effects of tunneling on hydrological systems; and water use and water diversion issues related to tunneling.

C. The DEIR/S Fails to Adequately Identify and Analyze the Project's Significant Traffic Impacts.

While the DEIR/S provides generalized information about LOS and V/C around individual stations *after* the HST system is operational, it completely ignores the substantial effects to surrounding roadways *during* the construction of stations, crossings, and railways. Given the 10-year construction period for the Project, these impacts would be significant. In addition, the DEIR/S fails to assess construction phase impacts to rural roadways and the effects of building access roads in parklands and other previously undeveloped areas.

The DEIR/S should be revised to present a description of these construction based impacts. At a minimum it should describe the potential traffic and safety impacts associated with heavy equipment, the temporary detours and delays to be experienced near construction sites, and estimate the length of the proposed construction for each type of station and/or crossing in order to assess the duration of construction effects. Additionally, the revised DEIR/S should contain an analysis of the impacts associated with building roads in previously roadless or less developed areas. Further, the revised document should contain feasible mitigation measures to address these impacts.

The Traffic and Circulation section is also flawed in that it presents only the most cursory and vague of mitigation "strategies," and, as discussed above, improperly defers

⁶ This is in addition to the construction impacts identified throughout this letter.

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formulation of detailed mitigation measures until the project-level review process. This approach to mitigation is legally inadequate. Feasible mitigation measures must be identified and their effects analyzed.

Finally, the DEIR/S fails to present any significance determination or analysis concerning the environmental impacts related to traffic. There is no description or discussion of whether an impact will be significant, less than significant, or can be lessened through adoption of mitigation measures. With several proposed alignments running through parklands or other previously undeveloped or little developed areas, road building and construction traffic will have major effects. A revised DEIR/S must identify the significant impacts, and then present and analyze appropriate mitigation measures.

D. The DEIR/S Fails to Adequately Identify and Analyze the Project's Air Quality Impacts.

The DEIR/S completely fails to identify and analyze the air quality impacts resulting from Project construction; instead, deferring this study until project-level review. (DEIR/S, p. 3.3-33.) For example, diesel exhaust, which would be produced by construction equipment, contains approximately 40 compounds that are listed by the U.S. Environmental Protection Agency ("EPA") as hazardous air pollutants and by the California Air Resources Board as toxic air contaminants. Additionally, particulate matter contained in diesel exhaust also poses a serious public health concern. However, nowhere in the DEIR/S are these construction-related air quality impacts of the proposed Project discussed or analyzed. A revised DEIR/S should identify and analyze the increase in diesel emissions and evaluate the public health impacts from construction equipment exhaust, as well as other construction related air quality impacts. Additionally, adequate mitigation measures should be proposed.

In addition, the DEIR/S fails to identify or analyze the impacts resulting from PM_{2.5} emissions. Substantial information has been published demonstrating that fine particulate matter causes significant health impacts at concentrations that are much lower than existing air quality standards. The DEIR/S does not evaluate whether the construction of the Project would cause or contribute to exceedances of these new standards or result in health impacts to local residents from the increase in particulate matter.

In addition, as in the Traffic section, the DEIR/S impermissibly defers the adoption of feasible mitigation measures until the project-level review stage. (DEIR, p. 3.3-33.) Mitigation measures must be identified for each significant impact identified in the EIR, and such measures may not be deferred to a future study. (CEQA Guidelines § 15126.4(a)(1)(B).) Because the DEIR/S fails to present specific mitigation measures and analyze them in the context of the identified air quality impacts, the DEIR/S is legally inadequate and must be revised.

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E. The DEIR/S Fails to Adequately Identify and Analyze the Project's Noise and Vibration Impacts.

The DEIR/S entirely ignores the noise impacts associated with construction of the HST system. It presents no information whatsoever about anticipated noise levels, their duration and effects upon sensitive receptors—both human and non-human. Noise from construction equipment, tunneling/blasting, and pile-driving must be disclosed, analyzed, and mitigation measures proposed.

In addition, the DEIR/S fails to analyze the impacts and effects from the noise produced by train operation on wildlife, and, specifically, on migratory birds. This information is not presented in either the noise or the biological resources section of the DEIR/S. The DEIR/S rates the HST as having a low potential noise impact through the rural Central Valley area, but this assessment is based on the fact that very few humans will hear the train running at its maximum operating speed. (DEIR/S 3.4-18.) This assessment in no way accounts for the impacts of noise, vibration, and air movement on wildlife and migrating birds.

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F. The DEIR/S Fails to Adequately Identify and Analyze the Project's Hazardous Materials and Solid Waste Impacts.

The DEIR/S fails to include any discussion of the hazardous materials used or hazardous waste produced during the construction, operation, or maintenance of the Project. The DEIR/S merely describes the potential for proposed stations or alignments to disturb existing hazardous waste sites which might result in exposure. (DEIR/S, p. 3.11-2.) However, the DEIR/S must provide information regarding the types of hazardous materials that will be utilized in building the stations and tracks, what hazardous waste will be generated during this process, how workers, the public, and the environment will be protected from exposure, and what disposal methods will be used. Further, the DEIR/S fails to disclose what types of hazardous materials, if any, will be used during the operation and maintenance of the HST system. Will herbicides be sprayed on the tracks? What lubricants will be used on the trains themselves? What will be the potential for exposure to workers, contamination of waterways, and effects on wildlife? Appropriate mitigation measures also must be described.

0042-9

Additionally, the DEIR/S fails to discuss the generation of solid waste during the construction phase of the Project. Enormous amounts of soil, rock, and other debris will be produced during the tunneling process, often in remote areas. Additional waste will be generated during the excavating, grading, and filling processes associated with laying track. A varied waste stream will be created during the construction of stations. None of the components of these potential waste streams is discussed, nor are any disposal and/or recycling strategies for this material. Such an analysis must be included in a revised and recirculated DEIR/S.